

**U.S. Department of Labor**

Office of Administrative Law Judges  
Heritage Plaza Bldg. - Suite 530  
111 Veterans Memorial Blvd  
Metairie, LA 70005

(504) 589-6201  
(504) 589-6268 (FAX)



**Issue date: 04Jun2001**

**CASE NO.: 2000-LHC-2643**

**OWCP NO.: 7-130136**

**IN THE MATTER OF**

**LEE GUIDRY  
CLAIMANT**

**V.**

**QUALITY SHIPYARDS, INC.  
EMPLOYER**

**INSURANCE COMPANY FOR THE STATE OF PENNSYLVANIA  
CARRIER**

**APPEARANCES:**

Jeffery M. Boudreaux, Esq.  
For Claimant

Foster P. Nash, III., Esq.  
For Employer

**BEFORE: C. RICHARD AVERY**  
Administrative Law Judge

**DECISION AND ORDER**

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et. seq.*, (The Act), brought by Lee Guidry (Claimant) against Quality Shipyards, Inc. (Employer) and Insurance Company for

the State of Pennsylvania (Carrier). The formal hearing was conducted at Metairie, Louisiana on January 18, 2001. Each party was represented by counsel, and each presented documentary evidence, examined and cross examined the witnesses, and made oral and written arguments.<sup>1</sup> The following exhibits were received into evidence: Joint Exhibit 1, Claimant's Exhibits 1-16 and Employer's Exhibits 1-8. This decision is based on the entire record.<sup>2</sup>

### **Stipulations**

Prior to the hearing, the parties entered into joint stipulations of facts and issues which were submitted as follows:

1. The date of the injury/accident was May 25, 1993;
2. The injury/accident occurred in the course and scope of employment;
3. An employer/employee relationship existed at the time of the injury/accident;
4. Employer was advised of the injury on May 25, 1993;
5. Notice of Controversion was filed between May 11, 1999 and June 11, 1999<sup>3</sup>;

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<sup>1</sup>The parties were granted time post hearing to file briefs. This time was extended up to and through March 30, 2001.

<sup>2</sup> The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript Pages- "Tr. \_\_, lines \_\_"; Joint Exhibit- "JX \_\_, pg.\_\_"; Employer's Exhibit- "EX \_\_, pg.\_\_"; and Claimant's Exhibit- "CX \_\_, pg.\_\_".

<sup>3</sup>See Employer's Exhibit 8: Notice of Controversion was filed on May 11, 1999, June 11, 1999, August 2, 1999, and July 13, 2000.

6. An informal conference was held on July 7, 1999; January 5, 2000; and April 13, 2000;

7. Average weekly wage at the time of injury was \$429.34;

8. Claimant was paid temporary total disability from June 6, 1993 to July 6, 1999 and temporary partial disability from July 7, 1999 to June 21, 2000<sup>4</sup>;

9. From June 9, 1993 to July 6, 1999, Claimant was paid benefits in the amount of \$286.23 and from July 7, 1999 to June 21, 2000, Claimant was paid benefits in the amount of \$109.56;

10. Medical benefits have been paid to Claimant;

11. Permanent disability is disputed; and

12. The date of maximum medical improvement is disputed.

### **Unresolved Issues**

The unresolved issues in this case are:

1. Whether it is “reasonable and necessary” for Claimant to undergo back surgery;

2. The extent of Claimant’s current disability, such as temporary total disability vs. partial disability;

3. Whether or not Claimant continued to be temporary totally disabled subsequent to Employer’s reduction of benefits to loss of wage earning capacity; and

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<sup>4</sup>This case came up for trial previously but the parties agreed to a continuance. As a result, Employer obligated itself to reinstate Claimant’s temporary partial disability benefits effective June 21, 2000 and continuing until a decision is rendered.

4. Whether or not Employer is liable to Claimant for temporary total benefits from the time benefits were reduced to loss of wage earning capacity.

## **Statement of the Evidence**

### Testimonial and Non Medical Evidence

Claimant testified that he was born in July 1951 in Houma, Louisiana. He was married in December 1969, and divorced in January 1999. During Claimant's marriage, he had three children, none of whom currently reside with him. Claimant graduated from high school in 1969, and began working with Hildenbrand, Inc., as an operator and pipe inspector, until 1971. Claimant next was employed by Julius Martin, as a boat operator, until 1972. From 1972 through 1977, Claimant worked at Universal Ironworks, as a tacker, welder and fitter. Following Universal, Claimant worked at Acadian Shipyard from 1977 through 1982, as a fitter, welder and leaderman. In 1983 Claimant collected unemployment. From 1984 through 1987 Claimant was self-employed as a carpenter and fisherman. Claimant's next position was with Hudco, Inc., as a fitter and welder, from 1988 through 1990.

In 1990 Claimant was hired by Employer as a regular employee, in the positions of fitter and welder. He worked for Employer until his second injury on May 25, 1993. Employer subsequently paid Claimant compensation as a result of this 1993 injury. Claimant's job duties for Employer consisted of heavy labor, work he had done all of his life.

While working for Employer, Claimant sustained two injuries. His first injury was in March 1992.<sup>5</sup> Claimant injured his back while lifting 3/4-inch plates of steel. Employer's safety director, Mr. Ray, referred Claimant to Dr. Walker, who treated Claimant for the injury. Dr. Walker took x-rays of Claimant, prescribed pain

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<sup>5</sup>Claimant sustained on-the-job injuries while employed by prior employers. While working at Hildenbrand, Claimant injured his right knee in 1970. While working at Acadian Shipyard, Claimant injured his right foot in 1978 and his lower back in 1980. While working at Hudco, Claimant injured his right elbow and shoulder in 1988. Surgery was never needed as a result of these injuries.

medication and indicated that Claimant had a lower lumbar strain. He continued to treat Claimant until September 1992.

Claimant returned to work a few days after his injury with the following restrictions: no heavy manual labor; no repetitive bending, squatting or kneeling; and no lifting in excess of 35 pounds. He was released to light-duty work, which Employer accommodated. Claimant was assigned to the fabrication shop where he constructed hand railings for vessels, as well as repaired steel hatches. Claimant believed that this work was not within Dr. Walker's restrictions, because he had to bend repetitively to pick up his tools, lift the steel plates, etc. If at all possible he had someone help him lift the plates. While performing his duties in the shop, Claimant worked in continuous pain.

In addition to working in the fabrication shop, Claimant worked on vessels in dry dock. He had difficulty performing his duties and asked for a helper to assist with his work, but was told that no helpers were available. Employer eventually asked Claimant to work solely in the yard. Claimant agreed to do so because he did not want to get laid off. While in the yard, Claimant was responsible for running pipe onto barges.

It was on a barge that Claimant sustained his second injury on May 25, 1993.<sup>6</sup> As Claimant and his foreman, Mr. Forrest, were carrying a 15 foot pipe to the location where it was to be fitted, Claimant's leg gave out while stepping over beams located on the bottom of the barge floor. Claimant, therefore, fell with the pipe on his shoulder, onto the beam and landed on his rear end. He immediately experienced pain extending from his neck to his rear end. Claimant filled out an accident report. He was unable to continue working, so he went home. Claimant attempted to return to work a few times, but he left early each time because his workload worsened the soreness in his back.

Claimant sought medical treatment for his back injury. He selected Dr. Butler, from Tulane, as his physician of choice. Claimant was examined by Dr. Butler in June 1993, and continuing through 1994. Claimant's symptomatology included pain in his neck, right shoulder blade, and pain extending from his lower

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<sup>6</sup>After May 1993, Claimant did not again injure himself at work. However, while at home, Claimant fell, broke a bone in his neck, and wore a neck brace for 6 weeks.

back down his right side, right leg and right hip. Dr. Butler took x-rays and prescribed medicine for Claimant's pain and inflammation. He diagnosed Claimant with spinal stenosis and took him off of work.

Dr. Butler referred Claimant to a variety of other doctors, including Drs. Brumfield and Whitecloud, who treated Claimant with medications.<sup>7</sup> Dr. Butler also referred Claimant to Dr. Doyle for pain management. Dr. Doyle took an x-ray, diagnosed Claimant with sacralage dysfunction, and prescribed physical therapy and medications. The physical therapy aggravated Claimant's back pain, and Dr. Doyle subsequently discontinued it.

In 1996, as a result of constantly experiencing intense pain, Claimant developed symptoms of anxiety and depression. He went to Bayou Oaks Hospital for psychiatric treatment. Employer subsequently authorized Claimant to see Dr. Ginzburg, a psychiatrist.<sup>8</sup> Claimant has been and continues to be treated by Dr. Ginzburg for his psychiatric problems. Dr. Ginsburg eventually took control of all of Claimant's medications.<sup>9</sup>

The time period between Drs. Doyle and Ginzburg's treatments, Claimant had no consistent medical care for his lower back. Employer, therefore, sent Claimant to Dr. Cenac for an evaluation. Subsequent to that evaluation, Claimant's benefits were reduced by Employer in 1999. The Department of Labor obtained authorization for Claimant to be examined by Dr. Murphy, an orthopedist.<sup>10</sup> During the period that Dr. Murphy treated Claimant, Claimant developed bladder problems. In November 1999, Claimant had to be hospitalized because of these problems.

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<sup>7</sup>Drs. Brumfield and Whitecloud work with Dr. Butler at Tulane.

<sup>8</sup>Claimant did not bring diagnostic films to his examination.

<sup>9</sup> Claimant currently takes the following medications: Vicodin, for pain; Naproxen, for pain and inflammation; Librium, for depression and anxiety; Rimeron, for depression; and Neurontin, for muscle spasms. Claimant's past medications included Prozac in 1994.

<sup>10</sup>Claimant did not bring diagnostic films to his examination.

In 1999, Claimant undertook treatment by Dr. Alexander.<sup>11</sup> Dr. Alexander ran a variety of tests and concluded that Claimant had a neurogenic bladder. Both Drs. Alexander and Murphy recommended surgery to relieve Claimant of his bladder problems. Dr. Murphy explained to Claimant that the damage to his bladder could not be corrected, but could be stopped by surgery. Claimant was next examined by Dr. Bartholomew.<sup>12</sup> He concurred with Drs. Alexander and Murphy, with regard to surgery for Claimant's bladder problems. Claimant testified that he would like the surgery performed.

Claimant continues to experience bladder and back problems. Claimant's constant back pain originates in his lower back and radiates down his right side, right testicle, right leg and into his right calf. Claimant's pain is sometimes worse than other times, ranging from a 10 to 6 (on a scale of 1 to 10). The pain has been a 10 three times, during which time Claimant went to the hospital. About three days of the week, his pain is a 6. The rest of the week, Claimant experiences pain ranging between an 8 and a 9.

Claimant's degree of back pain is affected by his activities and the weather. The intense pain (rated at 10) is unpredictable. Claimant's back pain affects his ability to sleep, sit for long periods, and stand for more than 5 minutes at a time.<sup>13</sup> Claimant can only walk between 30 and 50 feet before he needs to stop and rest. He also has difficulty bending, stooping, and squatting. Claimant cannot lift heavy objects and has problems with activities that require pushing and pulling, such as mopping and vacuuming. He only drives distances that are a half of a mile or less from his house.

Claimant's bladder problems include the retention of urine. As a result, he catheterizes himself about twice a week. This retention is very painful. Because of this problem, Claimant must limit his activities. In addition, Claimant's emotional problems have affected his ability to read, because he has difficulty concentrating.

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<sup>11</sup>Claimant did not bring diagnostic films to his examination.

<sup>12</sup>Claimant did not bring diagnostic films to his examination.

<sup>13</sup>When sitting, Claimant must adjust his position often. While standing, Claimant supports his weight with his left leg and needs something, like a desk, wall, or chair, to support himself.

While driving he becomes confused, gets lost, and cannot remember where he is/was going.

Before Claimant's injury and resulting disability in 1993, Claimant was a good provider for his family and had a loving relationship with his wife. Right after Claimant's back injury in 1993, he and his wife had marital difficulties. Claimant experienced mood swings and occasional bouts of crying. He was unable to maintain a physical relationship with his wife because of the pain and depression. He also had problems with his appetite and ability to sleep. In June 1998, Claimant's wife left him and he currently lives alone.<sup>14</sup> Claimant testified that he has thought about committing suicide three times and actually made plans to carry it out.

In 1997 Concentra Rehabilitation Services met with Claimant to help him obtain employment.<sup>15</sup> He cooperated with the representatives, completed applications and sought interviews with different companies numerous times. Claimant received call backs for additional interviews. Claimant also looked for employment in 1998 and 1999. Claimant kept a work log during this period.<sup>16</sup> He testified that he only interviewed with two employers listed on that log. Claimant submitted about 5 applications to employers not listed on his log.

Employer's Exhibit 7 is the vocational rehabilitation report from Concentra Managed Care Services, dating from November 25, 1997 through December 8, 1999.<sup>17</sup> An initial evaluation was made of Claimant on November 25, 1997, at which time medical and vocational information was obtained, as were Claimant's

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<sup>14</sup>For a brief period, Claimant's sister and daughter lived with him because they were both divorcing their respective spouses.

<sup>15</sup>In 1994 Claimant cooperated with the rehabilitation service to secure employment. *See* Claimant's Exhibit 13, a log of Claimant's 1994 job search. Employer continued to pay temporary total disability during this time period. Claimant has no dispute with the amount of compensation paid to him in 1994.

<sup>16</sup>*See* Claimant's Exhibit 16.

<sup>17</sup>There were various rehabilitation case managers mentioned throughout this report. No qualifications concerning these case managers was offered into evidence.



transferrable skills. The case manager identified 16 light duty positions that were appropriate given Claimant's past work history. On December 23, 1997 the case manager administered an achievement test to Claimant, and she noted that while Claimant remained unemployed, he was pursuing employment with the Terrebonne Parish School Board.

On February 4, 1998, a labor market survey was conducted in Houma and 5 jobs were identified: dispatcher, front desk clerk, service ticket agent, front desk clerk, and security guard. These possible positions were forwarded to various doctors, none of whom responded to this inquiry.

The March 16, 1999 report noted that Claimant expressed a strong desire to return to work. On March 30, 1999 a labor market survey was conducted and 5 jobs were identified: cashier/clerk, security guard, cashier, distribution tech and retail. These 5 potential jobs were forwarded on April 1, 1999 to Dr. Ginzburg for his approval. The report of April 20, 1999 stated that Claimant underwent a FCE, applied for 3 jobs, and the case manager identified 4 additional jobs in the Houma area. On April 27, 1999 these 4 additional jobs were forwarded to Dr. Ginzburg for his approval.

Claimant, on May 11, 1999, discontinued the application process because of increased pain and a subsequent increase in his pain medication. The June 1, 1999 report stated that Dr. Ginzburg, as of May 25, 1999, approved all 9 positions previously identified during the March 30, 1999 and April 20, 1999 labor market survey. The case manager referred Claimant to Dr. Cenac for an orthopedic evaluation to obtain a disability rating and treatment recommendations. On April 30, 1999, Dr. Cenac approved all 9 positions previously identified.

The September 28, 1999 report stated that Claimant had made no job search efforts. By October 29, 1999 Claimant had been evaluated by Dr. Murphy at the request of the Department of Labor. The case manager re-instated the job search and identified 2 alternative positions of manager/trainee and retail sales. The last report was dated December 8, 1999 and stated that a labor market survey was initiated in the Houma area to identify suitable employment for Claimant paying above minimum wage. Claimant, as of that date, was not working.

Claimant's Exhibit 1 is Claimant's federal income tax records dating from 1991 through 1997.

### Medical Evidence

#### **Dr. A. D. Walker, Jr.**

Claimant's Exhibit 8 is the medical records of Dr. A. D. Walker, Jr., of the Bayou Orthopedic Center. Dr. Walker examined Claimant on August 3, 1992, following his first injury while working for Employer. Dr. Walker previously believed Claimant had only suffered a lumbar sprain, but based on "the multiple levels of degenerative arthritis in the back," opined that Claimant's symptoms suggested nerve irritation. He ordered a CT scan of Claimant's lumbar spine. Dr. Walker's last examination of Claimant was on August 27, 1992. After reviewing the CT scan, he opined that Claimant had "degenerative disc disease more advanced than usual in this age group." He stated that Claimant could no longer perform heavy labor and recommended a light work load for Claimant with restrictions.

#### **Dr. James Butler**

Claimant's Exhibit 9 is the medical records of Dr. James Butler, dating from June 9, 1993 through May 4, 1994. Dr. Butler is an associate professor of orthopedic surgery at the Tulane Medical Center. Following his May 25, 1993 accident, Claimant was initially evaluated on June 9, 1993. He complained of severe pain in the interscapular area and occasional neck pain. Dr. Butler was aware of Claimant's 1992 back injury. Dr. Butler wanted to rule out cervical disc syndrome, so on June 14, 1993, Claimant underwent an MRI scan of the cervical spine. The findings from the MRI were normal.

Claimant was examined by Dr. Butler on July 19, 1993. He stated that the physical therapy Dr. Butler had previously prescribed aggravated his lower back, causing pain. Therefore, Dr. Butler stopped the physical therapy treatments. In Dr. Butler's August 6, 1993 report, he stated that Claimant could not return to heavy labor.

On September 15, 1993 Dr. Butler examined Claimant, who complained of low back pain. Dr. Butler recommended a variety of tests, all of which were

subsequently performed.<sup>18</sup> Dr. Butler reviewed the results of the tests and opined that Claimant was at MMI and suffered from symptomatic spinal stenosis at the L1-2 level and chronic neck pain from a cervical strain. He recommended a FCE and vocational rehabilitation.

On May 4, 1994 Claimant returned to Dr. Butler because his symptoms had worsened. Dr. Butler's impression was exacerbation of chronic low back pain. Because Claimant had an increase in his subjective symptoms, Dr. Butler stated that Claimant was temporarily totally disabled. He discussed surgery with Claimant and recommended conservative measures. Dr. Butler expected Claimant's symptoms to decrease, which would allow him to return to some type of work, as outlined in the FCE. Dr. Butler referred Claimant to Dr. Doyle, a pain specialist.

### **Dr. Edna Doyle**

Claimant's Exhibit 12 is the medical records of Dr. Edna Doyle, a diplomate on the American Board of Physical Medicine and Rehabilitation. She examined Claimant on February 12, 1995. Claimant complained of neck pain, pain in the right sacroiliac area, around to the groin and down the lateral thigh to the knee, and soreness under his right heel. Dr. Doyle performed an examination and spoke with Claimant's physical therapist who related that Claimant only complained to him of neck pain, not back pain. Dr. Doyle concluded that her findings did not correlate with Claimant's complaints. She recommended a psychological evaluation.

Dr. Doyle examined Claimant on August 21, 1995. Claimant stated that his symptoms had not changed. Dr. Doyle again spoke with Claimant's therapist, who related that Claimant's symptoms did not appear to be improving with the therapy. Dr. Doyle, therefore, recommended that Claimant discontinue physical therapy. After reviewing the psychological evaluation performed by Mr. Schiber, she recommended Claimant see a psychiatrist. In addition, Dr. Doyle recommended a sacroiliac fixation because conservative care had not been effective.

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<sup>18</sup> The tests included EMG and nerve conduction studies of the lower extremities, thoracolumbar myelogram, cervical myelogram, and post myelogram CT study of the lumbar spine. The findings of the tests were normal. However, in the lumbar area there was evidence of impingement and stenosis at the L1-2 level.

## **Dr. Harold Ginzburg**

Claimant's Exhibit 15 is the deposition of Dr. Harold Ginzburg, taken on January 10, 2001.<sup>19</sup> Dr. Ginzburg is a board certified psychiatrist. He is currently in private practice evaluating and treating patients who have developed psychiatric or neuropsychiatric problems as a result of a physical injury, chronic illness or a traumatic incident. Dr. Ginzburg has treated Claimant since May 1996 and continues to do so. Claimant was referred to Dr. Ginzburg by Janet Sharpe, who is with the American International Health and Rehabilitation Services, for an evaluation.

Dr. Ginzburg conducted a clinical examination of Claimant on May 2, 1996. During the examination, he obtained background, social, family and medical histories, as well as a history of Claimant's illness. Claimant reported the symptoms of depression, pain and problems of sexual intimacy with his wife. Dr. Ginzburg also performed a mental status examination to determine whether Claimant had underlying psychotic thought disorders or pre-existing mental conditions. In addition, Dr. Ginzburg reviewed records from Bayou Oaks and Drs. Butler and Doyle.<sup>20</sup>

Dr. Ginzburg's initial clinical impression was that Claimant had experienced a major depressive episode due to an external event.<sup>21</sup> In other words, there was a change in Claimant's life that required him to adapt to a new situation, and Claimant was unable to do that. Dr. Ginzburg opined that Claimant "on Axis I suffered from a major depressive disorder, reactive in nature." (page 20) This disorder was mild to moderate in severity. Dr. Ginzburg attributed Claimant's condition to the pain associated with his work-related injuries. As a result of these injuries, Claimant suffered orthopedic problems, could neither work nor have a steady income, endured pain, and received some treatment without any indication of any definitive

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<sup>19</sup>Claimant's Exhibit 5 is the medical records of Dr. Ginzburg.

<sup>20</sup>Dr. Ginzburg mentioned that Dr. Doyle referred Claimant to him. Dr. Doyle often referred patients to Dr. Ginzburg when she felt the psychiatric symptoms were beyond what she was able to treat. Dr. Ginzburg was aware that Claimant had been treated at Bayou Oaks, a psychiatric facility.

<sup>21</sup>An event other than marital or family problems.

treatment. It was Dr. Ginzburg's professional opinion, to a reasonable degree of medical certainty, that from a mental health or psychiatric perspective, Claimant's psychiatric condition was treatable, allowing him to eventually re-enter the work force full-time.

Dr. Ginzburg next examined Claimant in May 1996 to adjust the various medications that aided Claimant with sleep, pain, depression, and muscle relaxation. Eventually, Dr. Ginzburg took control of all of Claimant's medications. In June 1996, Dr. Ginzburg contacted Mrs. Sharpe to begin retraining Claimant for another profession, such as a welding instructor.

Claimant returned to Dr. Ginzburg in July 1996, complaining of lower back pain and concentration problems. Claimant had even begun walking with a cane. Dr. Ginzburg requested additional tests and consultations to be performed and stated "[a]s long as the pain is substantive and has a physiological etiology, it will be difficult to remove the depression." (page 28) Claimant returned in September and spoke to Dr. Ginzburg about the suicide of his cousin and problems with his son.

On October 21, 1996, Claimant stated to Dr. Ginzburg that he was aggravated and wanted something done to help him, such as a surgery. Claimant was unable to work and stayed at home. By this time Dr. Ginzburg was Claimant's only treating physician. In November, Dr. Ginzburg noticed that Claimant had lost weight and became concerned about Claimant's liver functions. He, therefore, sent Claimant to be examined at Terrebonne General Hospital.

In January and February 1997, Claimant complained of memory lapses, increased pain, and shortness of breath, while his wife complained that Claimant was irritable and uncommunicative. By May 1997, Claimant had ceased to drive anywhere. He had even begun using a cervical collar. By June 1997, Claimant and his wife were having marital problems, which resulted in a divorce in March 1999. In September 1997, Claimant developed a problem with buckling of his legs. He subsequently was examined at both Terrebonne General and Leonard J. Chabert Medical Center.<sup>22</sup> Dr. Ginzburg continued to be Claimant's only treating physician. There was no definitive medical plan for Claimant's spinal problems.

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<sup>22</sup>See Claimant's Exhibit 11, the medical records from the Leonard J. Chabert Medical Center.

In January 1998, Claimant complained of right leg numbness and concentration problems. On March 3, 1998, Dr. Ginzburg re-adjusted Claimant's medication and met with the case manager to find Claimant work. By May, Claimant had become more depressed, had suicidal thoughts, was agitated and had urinary retention.<sup>23</sup> Claimant had also applied and been turned down for 3 jobs. In July 1998, Dr. Ginzburg suggested that Claimant obtain a second opinion for his rashes and urinary retention.<sup>24</sup>

Dr. Ginzburg next examined Claimant on January 5, 1999. Claimant was living alone. By March, Claimant had begun driving distances of half of a mile or less. On May 25, 1999, Claimant told Dr. Ginzburg he had applied for a few jobs without success. In June 1999, Claimant was examined by Dr. Cenac for an evaluation. In July 1999, Claimant was examined by Dr. Murphy, an orthopedist, who reported that Claimant had progressive urinary incontinence. Claimant, by this time, had become socially isolated.

Dr. Ginzburg did not examine Claimant again until June 29, 2000. Claimant reported that he had seen Drs. Alexander, Bartholomew and Steck. November 8, 2000 was Dr. Ginzburg's last examination of Claimant. Claimant's gait continued to be unsteady, but his weight was stable. Dr. Ginzburg diagnosed Claimant with depression, chronic pain (partially controlled by the narcotic and antidepressant), urological complications secondary to the work-related injury and incontinence. Dr. Ginzburg also stated that psychiatric intervention continued to be necessary.

Dr. Ginzburg believed that Claimant's urological problems exacerbated his depression. Dr. Ginzburg remained of the opinion that Claimant's depression was causally related to his pain. He also stated that Claimant tried several times but was unable to re-enter the work force and as of the trial Claimant had still not re-entered the workforce. Dr. Ginzburg testified that Claimant's complaints have been consistent, honest and forthright. In addition, Claimant had not abused his prescription medication.

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<sup>23</sup>Dr. Ginzburg testified that the long term usage of Claimant's medications, taken individually or collectively, could not cause Claimant's bladder problem.

<sup>24</sup>Dr. Ginzburg noted that he was concerned because Claimant had shaved off his mustache that he had since he was 18 years old.

## **Dr. Thomas Whitecloud and Dr. Chris Braumfield**

Claimant's Exhibit 10 is the medical records of Drs. Thomas Whitecloud and Chris Braumfield.<sup>25</sup> Claimant was examined on December 20, 1996, for a second opinion, by Drs. Whitecloud and Braumfield. Claimant related the history of his May 1993 injury. Claimant complained of chronic back, neck and lower extremity pain. His chief complaint, however, related to his lower back pain. After reviewing the records of Drs. Butler, Doyle and Ginzburg, and performing a physical examination of Claimant, Drs. Whitecloud's and Braumfield's impression was "chronic neck and back pain likely psychophysiological musculoskeletal reaction." (page 2) They believed Claimant had reached MMI with an impairment rating of 10 %. They also stated that Claimant could not return to his previous employment and that he was not a surgical candidate at that time.

## **Dr. Christopher Cenac**

Claimant's Exhibit 6 and Employer's Exhibit 1 are the medical records of Dr. Christopher Cenac, an orthopedic surgeon of the Bone and Joint Surgical Clinic. Dr. Cenac examined Claimant on August 17, 1992, as a referral from Dr. Walker, following Claimant's first injury while working for Employer. He reviewed Claimant's CT scan, Dr. Walker's medical records, and concurred with Dr. Walker's diagnosis and work restrictions.

Dr. Cenac next examined Claimant on July 29, 1997. Claimant explained that he had returned to work after his first injury in March 1992 and on May 23, 1993 re-injured his back because he exceeded the work restrictions previously assigned by Drs. Walker and Cenac. During the exam, Claimant complained of neck and low back pain and radiating pain in his upper and lower extremities. "He is no better subjectively at this time than he was at the time of the original injury, 5/23/93." (page 17) Dr. Cenac reviewed the records of Drs. Butler, Doyle, Ginzburg and Braumfield. He concurred with the recommendations of Drs. Butler and Braumfield. He believed Claimant had reached MMI and that his current subjective complaints were unrelated to the original injury and unsubstantiated by objective physical findings.

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<sup>25</sup>Dr. Braumfield is an orthopedic resident. Dr. Whitecloud is a professor and chairman of the Department of Orthopedic Surgery at the Tulane University Medical Center.

In response to a letter written by the Concentra rehabilitation case manager, Dr. Cenac, on January 5, 1998, indicated that Claimant had reached MMI prior to his July 29, 1997 exam and had a 10 % impairment of his whole body. It was also Dr. Cenac's opinion that Claimant could work in a sedentary, light, or medium capacity with the following restrictions: no lifting weight greater than 50 pounds and no repetitive stooping, squatting, twisting, kneeling or bending.

Claimant returned to Dr. Cenac on June 29, 1999. Claimant completed a functional capacity evaluation (FCE) which Dr. Cenac believed confirmed his findings of "symptom magnification and illness behavior."<sup>26</sup> Dr. Cenac last examined Claimant on January 27, 2000, at the request of Concentra Managed Care. He reviewed all of Claimant's medical records, including the reports of Drs. Alexander and Murphy, and recommended an enhanced thoracic and lumbar myelogram with a CT study post injection, which was subsequently performed and reviewed by Dr. Cenac on February 3, 2000. In a final letter dated January 12, 2001 to Employer's attorney, Dr. Cenac stated that he concurred with Dr. Steck's report of January 3, 2001 and recommendations. He believed Claimant had reached MMI, was employable and was not a surgical candidate.

### **Dr. George Murphy**

Claimant's Exhibit 14 is the deposition of Dr. George Murphy, taken on January 10, 2001. While Dr. Murphy is a board certified orthopedic surgeon, as of January 1998, he no longer performed surgery.<sup>27</sup> Dr. Murphy examines and treats patients with lumbar spine injuries. Dr. Murphy first examined Claimant on July 26, 1999, on referral from the Department of Labor. Dr. Murphy was asked to examine Claimant and determine whether additional treatments, such as surgery, were warranted and what kind of disability, if any, existed.

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<sup>26</sup>Dr. Cenac stated that the FCE was invalid. See Employer's Exhibit 6, the FCE Claimant underwent on April 7, 1999. The evaluator determined that this FCE was neither reliable nor valid. He had low confidence that Claimant put forth his best effort. I find, therefore, that this FCE did not truly represent Claimant's physical capacity, and it will not be considered in my analysis.

<sup>27</sup>Claimant's Exhibit 2 is the medical records of Dr. Murphy.



After Dr. Murphy obtained a history from Claimant and performed a physical examination, he concluded that Claimant needed a new MRI scan of the cervical and lumbar spine, as well as EMG and nerve conduction testing of the right upper extremity and lower extremity. Dr. Murphy's preliminary diagnosis, prior to the completion of the tests, was "cervical spondylosis, with advanced degenerative change at the L1-2 level."

Upon completion of the recommended tests in September 1999, Claimant returned to Dr. Murphy on September 28, 1999. They discussed the findings of the various tests. The EMG test and nerve conduction study were normal. The cervical MRI showed early degenerative changes and the lumbar MRI showed "advanced degenerative change at L1-2 with probable central disc herniation with an anterior defect against the subarachnoid space." (page 14) At this time, Claimant began having problems controlling his bladder functions so Dr. Murphy strongly urged Claimant to see an urologist to determine if Claimant had developed a neurogenic bladder.

Dr. Murphy stated that Claimant's possible neurogenic bladder could be caused by the pressure on his spinal cord that resulted from the degeneration, the kyphosis, and disc bulging. He reviewed two reports, a post-myelogram CT of the lumbar and thoracic spine dated February 12, 2000 and a lumbar and thoracic myelogram dated February 2, 2000, from Terrebonne General Medical Center. Dr. Murphy stated that these reports showed Claimant had pressure on his spinal cord at the L1-2 levels.

Dr. Murphy did not examine Claimant again until April 18, 2000. At this time, he reviewed the reports of Drs. Alexander and Baum, both urologists. These doctors concluded that Claimant had a neurogenic bladder related to his back problem.<sup>28</sup> Because Dr. Murphy believed Claimant needed ongoing active follow-up, he recommended Claimant be evaluated by either a qualified neurosurgeon or orthopedic surgeon who was familiar with the necessary surgery.<sup>29</sup> Dr. Murphy believed Claimant had suffered additional impairments because of the delay in his treatment and would continue to suffer them as long as treatment was delayed. He

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<sup>28</sup>A neurogenic bladder is a bladder problem caused by nerve damage. (page 61)

<sup>29</sup>Dr. Murphy recommended that Claimant see Dr. Bartholomew.

also stated that surgery, while not necessarily reversing the problem, may prevent it from worsening. It was his opinion that if a qualified neurosurgeon or orthopedic spine surgeon offered surgery to Claimant, it would be appropriate.

If Claimant does not have surgery, Dr. Murphy stated that Claimant's bladder problems would definitely worsen and he could have additional problems with his bowel movements, as well as with his lower extremities. Dr. Murphy diagnosed Claimant's condition as "trouble at the L1-2 level with spinal cord damage resulting in the neurogenic bladder." (page 31) Given Claimant's work accident history and the fact that Claimant has had no other injuries to his lumbar spine, Dr. Murphy believed these accidents were the cause of Claimant's symptoms.

Dr. Murphy, in the September 28, 1999 report, believed Claimant was only suited for sedentary activities. However, with the onset of Claimant's bladder problems, he deferred the judgment of Claimant's activity level to the urologist. Dr. Murphy did state, however, that Claimant could in no way return to his previous job duties.

Dr. Murphy reviewed Dr. Steck's January 3, 2001 report. He disagreed with Dr. Steck, who stated that surgery was not warranted because there was no evidence to show spinal compression. Dr. Murphy pointed out that various tests clearly indicated pressure on the spinal canal. It was Dr. Murphy's belief that it was a "good probability that the source of Claimant's neurogenic bladder is at L1-2 level."<sup>30</sup> (page 36) If a surgeon who performs this type of surgery believed he could potentially help Claimant, then Dr. Murphy would agree that surgery was warranted.

### **Dr. Robert Alexander**

Claimant's Exhibit 4 is the medical reports of Dr. Robert Alexander. Claimant was examined by Dr. Alexander, an urologist, on December 15 and 17, 1999. Claimant complained of difficulty urinating. After Dr. Alexander examined Claimant and performed various tests, he concluded that Claimant had a hypotonic neurogenic bladder.

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<sup>30</sup>Dr. Murphy defined "good probability" as anything over 50 %.

I would expect that his lumbar problem consists of a central disc or pressure on the central portion of the spinal canal at this level. It is my opinion that surgical correction of this lumbar problem should be undertaken if appropriate from an orthopedic standpoint. (page 1)

### **Dr. Neil Baum**

Claimant's Exhibit 7 and Employer's Exhibit 3 are the medical reports of Dr. Neil Baum. Dr. Baum, an urologist, examined Claimant on January 28, 2000 because he was having difficulty urinating. Claimant complained of urinary frequency and nighttime voiding, but denied urinary incontinence. After performing a physical examination and reviewing the report of Dr. Alexander, Dr. Baum opined that Claimant had urinary symptoms related to his injury of 1993. He recommended additional tests to be performed.

### **Dr. Bradley Bartholomew**

Claimant's Exhibit 3 is the medical records of Dr. Bradley Bartholomew, a neurosurgeon. Dr. Bartholomew examined Claimant on June 18, 2000. Claimant was referred to Dr. Bartholomew because of the worsening of his urological symptoms. Claimant complained of increased frequency, difficulty beginning urination and incontinence for 1.5 years. After Dr. Bartholomew performed a physical examination and reviewed various MRIs, 2 myelograms, a post-myelogram CT, and the reports of Drs. Baum, Alexander and Cenac, he concluded that Claimant should undergo a decompressive procedure, which he could perform.

### **Dr. Steck**

Employer's Exhibit 5 is the deposition of Dr. John Steck, taken on January 12, 2001.<sup>31</sup> Dr. Steck is a board certified neurosurgeon. He performs the type of surgery necessary to correct a neurogenic bladder. Claimant was referred to Dr. Steck by AIG.

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<sup>31</sup>Employer's Exhibit 4 is the report of Dr. Steck.

Dr. Steck examined Claimant on January 3, 2001. Claimant provided a history of his 1993 work accident with resulting injuries.<sup>32</sup> He complained of low back soreness with radiation to the right testicle, right hip pain that extended down the right leg, and difficulty with his bladder, specifically urinary frequency and frequent urination at night. Dr. Steck performed a physical examination and reviewed various tests, including a myelogram, CT myelogram of the thoracic and lumbar spine, MRI scan of the lumbar spine, and an MRI of the cervical spine.<sup>33</sup>

Based upon his review of the diagnostic tests and examination, Dr. Steck diagnosed Claimant with “an arthritic condition in his lumbar spine at L1-2, a degenerative disc and symptoms of urinary disturbance. I am not sure he does have what I would call a neurogenic bladder.” (page 10)

Dr. Steck believed Claimant was not a surgical candidate for the reversal of neurogenic bladder. At the time of Dr. Steck’s examination, he believed Claimant had reached maximum medical improvement. He also believed Claimant could work in either a sedentary or light capacity position.

Dr. Steck opined if surgery is performed, it should be a decompressive procedure. However, he did not believe there was a great likelihood that this type of surgery would fix a neurogenic bladder. “A bladder disturbance related to a spinal problem is one of the most difficult things to improve with surgery.” (page 12) In Dr. Steck’s opinion, a decompressive lumbar laminectomy would put Claimant at risk for further degenerative change at that spinal segment, possibly resulting in spinal instability.

#### **Dr. Thomas Hannie, Jr.**

Employer’s Exhibit 2 is the medical records of Dr. Thomas Hannie, Jr. Dr. Hannie is a licensed clinical psychologist. He performed a psychological evaluation

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<sup>32</sup>Dr. Steck believed Claimant was forthright and truthful during the examination.

<sup>33</sup>The MRI of the lumbar spine showed degenerative change at L1-2, slight kyphosis, and narrowing of the spinal canal. The cervical spine MRI showed spondylitic change but no evidence of cord compression. The myelogram of the thoracic and lumbar spine showed narrowing of the spinal canal at L1-2. The CT scan did not show compression of the lower spinal cord.

of Claimant on February 8, 2000, at the request of AIG Adjusting. After Dr. Hannie reviewed Claimant's prior medical records and administered a variety of tests, he stated that no indication of pre-existing psychopathology existed. He believed that Claimant had experienced marital difficulties while he was still employed by Employer. Dr. Hannie determined that Claimant suffered from significant depression with suicidal ideation/potential. The etiology of this depression was uncertain, arising from the pain or his marital difficulties. This depression affected Claimant's ability to work. It was Dr. Hannie's opinion that surgery would not be successful in relieving his pain complaints because of the depression and lack of support from his wife. Therefore, he recommended that Claimant be stabilized psychologically and socially prior to surgery.

### **Findings of Fact and Law**

#### Causation

Section 20 (a) of the Act provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed which could have caused, aggravated or accelerated the condition. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Bldg. Co.*, 23 BRBS 191 (1990). The Section 20 (a) presumption operates to link the harm with the injured employee's employment. *Darnell v. Bell Helicopter Int'l, Inc.*, 16 BRBS 98 (1984). It must be further recognized that all factual doubts must be resolved in favor of Claimant. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); *Strachan Shipping Co. v. Shea*, 406 F.2d 521 (5<sup>th</sup> Cir. 1969). Furthermore, it has been consistently held that the Act must be construed liberally in favor of Claimant. *Voirs v. Eikel*, 346 US 328, 333 (1953); *St. John Stevedoring Co. v. Wilfred*, 818 F.2d 397, 399 (5<sup>th</sup> Cir. 1987).

Once the claimant has invoked the presumption the burden shifts to the employer to rebut the presumption with substantial countervailing evidence. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). If the Section 20 (a) presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

In this instance, Claimant and Employer stipulated in Joint Exhibit 1 that an injury/accident occurred on May 25, 1993 during the course and scope of Claimant's employment. I find that a harm and the existence of working conditions which could have caused that harm has been shown to exist, and I accept the parties stipulation. Claimant clearly injured himself while working for Employer. The extent, duration and disabling effects of that injury, however, is in issue.

### Nature and Extent

Having established an injury, the burden now rests with Claimant to prove the nature and extent of his disability. *Trask v. Lockheed Shipbuilding Construction Co.*, 17 BRBS 56, 59 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). *Id.* at 60. Any disability before reaching MMI would thus be temporary in nature.

The date of maximum medical improvement is defined as the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. The date on which a claimant's condition has become permanent is primarily a medical determination. *Manson v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984). The date of maximum medical improvement is a question of fact based upon the medical evidence of record regardless of economic or vocational consideration. *Louisiana Insurance Guaranty Assoc. v. Abbott*, 40 F.3d 122, 29 BRBS 22 (CRT) (5<sup>th</sup> Cir. 1994); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 186 (1988); *Williams v. General Dynamics Corp.*, 10 BRBS 915 (1979).

Drs. Butler, Ginzburg, Murphy, Alexander, Baum and Bartholomew all apparently agree that Claimant has not reached MMI. With the exception of Dr. Butler, their opinions were rendered after the onset of Claimant's bladder problems in September 1999, as documented by the report of Dr. Murphy. Dr. Butler, an orthopedic surgeon, examined Claimant from June 1993 through May 1994. Although he determined that Claimant had reached MMI, he later declared that due to Claimant's increase of symptoms, Claimant was temporarily totally disabled as of May 4, 1994.

Dr. Ginzburg, a psychiatrist, is Claimant's treating physician and has been since May 1996. While he never spoke directly to MMI, he stated that Claimant's

depression would resolve once his pain was removed. He believed that psychiatric intervention, as of November 8, 2000, continued to be necessary. As Dr. Ginzburg believed Claimant's condition could still improve, I infer he is of the opinion that Claimant was not at MMI.

Dr. Murphy, an orthopedic surgeon, examined Claimant from July 1999 through April 2000. While not specifically addressing MMI, he believed that Claimant would greatly benefit from decompressive surgery if a qualified surgeon decided that Claimant was a good candidate. He stated that Claimant was in need of active follow-up treatment. He believed that Claimant's condition could somewhat improve, obviously placing Claimant's MMI date in the future.

Dr. Alexander, a urologist, examined Claimant once for a urological consultation in December 1999. He concluded that Claimant had a neurogenic bladder and as such, Claimant should have surgery, a decompressive procedure. As additional treatment was necessary, I infer again that Claimant was not at MMI. Likewise, Dr. Baum thought more testing was warranted, indicating Claimant was not at MMI.

Lastly, Dr. Bartholomew, a neurosurgeon, examined Claimant in June 2000. He too believed that Claimant was an excellent candidate for surgery, and consequently not at MMI.

Drs. Whitecloud, Braumfield, Cenac and Steck all determined that Claimant had reached MMI. Drs. Whitecloud and Braumfield examined Claimant once in 1996. They determined that Claimant, as of December 20, 1996, had reached MMI. Obviously, their examination was prior to the onset of Claimant's increased symptoms and bladder problems in September 1999.

Dr. Cenac examined Claimant on a consultation basis on three separate occasions: July 29, 1997, June 29, 1999 and January 27, 2000, but interestingly refused to be Claimant's treating orthopedist. Dr. Cenac opined that Claimant had reached MMI prior to his July 29, 1997 examination. Dr. Cenac reaffirmed this MMI date during his two subsequent evaluations of Claimant. However, the MMI date he chose was prior to the onset of Claimant's bladder problems in September 1999, which causes me to be distrustful of Dr. Cenac's opinion. In addition, Dr. Cenac was not in the best position to ascertain whether or not Claimant had

reached MMI since he only examined Claimant three times over a span of three years and was not one of Claimant's treating physicians. Likewise, as an orthopedic surgeon he is not the best qualified to diagnose urological problems.

Dr. Steck, a neurosurgeon, examined Claimant once on January 3, 2001. He believed that Claimant had reached MMI as of that date. Dr. Steck reviewed Claimant's diagnostic tests and concluded that Claimant did not have a neurogenic bladder, and was, therefore, not in need of surgery. He determined Claimant was at MMI. While Dr. Steck is a qualified neurosurgeon, he is not a qualified urologist. I accept the opinions of Drs. Murphy, Alexander and Bartholomew that Claimant is in need of surgery. Consequently, since Dr. Steck only saw Claimant on one occasion and since his opinion was grounded on the belief that Claimant does not need surgery, I am unwilling to accept his opinion regarding MMI.

As stated, I accept the opinions of Drs. Ginzburg, Murphy, Alexander and Bartholomew over those of Drs. Whitecloud, Braumfield, Cenac and Steck. Drs. Ginzburg, Murphy, Alexander and Bartholomew all examined Claimant after the onset of his bladder problems in 1999 and were in the best position to assess whether Claimant had reached MMI. I accept their reasoning and conclude that Claimant has yet to reach MMI. Any compensation paid, therefore, will be temporary in nature.

The question of extent of disability is an economic as well as medical concept. *Quick v. Martin*, 397 F.2d 644 (D.C. Cir. 1968); *Eastern S.S. Lines v. Monahan*, 110 F.2d 840 (1<sup>st</sup> Cir. 1940). A claimant who shows he is unable to return to his former employment establishes a prima facie case of total disability. The burden then shifts to the employer to show the existence of suitable alternative employment. *P&M Crane v. Hayes*, 930 F.2d 424, 430 (5<sup>th</sup> Cir. 1991); *N.O. (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038, 14 BRBS 1566 (5<sup>th</sup> Cir. 1981). Furthermore, a claimant who establishes an inability to return to his usual employment is entitled to an award of total disability compensation until the date on which the employer demonstrates the availability of suitable alternative employment. *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128 (1991). Issues relating to nature and extent do not benefit from the Section 20 (a) presumption. The burden is upon Claimant to demonstrate continuing disability (whether temporary or permanent) as a result of his accident.



The questions at issue include Claimant's reduction of benefits from temporary total disability to temporary partial disability on July 7, 1999 and Claimant's current disability status. Claimant is satisfied with the compensation he received up to July 7, 1999.

Claimant cooperated with Concentra Rehabilitation Services, completed applications and interviewed with prospective employers until May 11, 1999. Claimant interviewed for light capacity jobs due to his medical condition, as opposed to a heavy manual labor job like that he performed while employed by Employer. Claimant testified that none of the prospective employers would hire him. As of May 11, 1999, Claimant discontinued the application process because of an increase in pain. He confirmed that because of his physical and mental disabilities, he has not worked since May 25, 1993.

Dr. Whitecloud, Braumfield, and Murphy all agreed that Claimant could never return to his previous employment of fitter and welder. On September 28, 1999, Dr. Murphy determined that Claimant could perform sedentary activities. However, because of the onset of Claimant's bladder problem, he subsequently deferred the judgement of Claimant's activity level to the urologist.<sup>34</sup>

Dr. Cenac believed that Claimant could work in some capacity. Dr. Cenac stated that as of January 5, 1998, Claimant could work in a sedentary, light, or medium capacity with restrictions. However, these restrictions do not encompass the type of heavy labor Claimant was performing prior to his accident. Consequently, I find that Claimant has demonstrated he is unable to return to his previous employment of fitter and welder in July 1999, and therefore has made out a prima facie case that he continued to be totally disabled as of July 7, 1999.

Employer, in an effort to rebut the presumption of Claimant's total disability in 1999, offered a vocational rehabilitation report from Concentra Managed Care Services, dating from November 25, 1997 through December 8, 1999. On March 30 and April 20, 1999, labor market surveys were conducted in the Houma area. Nine jobs in the sedentary, light and medium categories were identified. On May 25, 1999, Dr. Ginzburg approved the 9 positions and on April 30, 1999, Dr. Cenac likewise approved these positions from an orthopedic standpoint.

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<sup>34</sup>Neither Dr. Alexander nor Dr. Baum made reference to Claimant's capacity to work.

Despite the 1999 job approvals by Drs. Cenac and Ginzburg, as well as the guarded statement by Dr. Murphy on July 26, 1999, and the one time opinion of Dr. Steck that Claimant could perform sedentary work, I am unwilling to find that Claimant was then capable or is now capable of gainful employment.

As of May 11, 1999, Claimant testified, and I accept his testimony, that he had ceased looking for employment because his pain was too great. He was taking a heavy regime of medications, and as evidenced by Dr. Ginzburg's subsequent reports, was suffering from depression, chronic pain and ultimately urological complications which by the fall of 1999 had worsened to the point that Claimant was hospitalized and is now in need of surgery.

In other words, I accept Claimant's testimony that he is unable to compete for, obtain or retain gainful employment due to both his mental and urological problems. Support for his testimony is found in Dr. Ginzburg's opinion that as of November, 2000, he did not believe Claimant possessed the necessary mental capacity to work. Also, Dr. Bartholomew's opinion clearly expresses his belief that Claimant is in need of surgery to hopefully relieve his urological problems, all of which are related to his initial industrial accident and injury of May 25, 1993.

For the foregoing reasons, I find that Claimant remains totally disabled and has been since July 7, 1999. Claimant is therefore entitled to the reinstatement of temporary total disability benefits beginning July 7, 1999 and continuing.

#### Medical Expenses

In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. *Parnell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R. § 702.402. A claimant has established a prima facie case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work related condition. *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 257-258 (1984). The claimant must establish that the medical expenses are related to the compensable injury. *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981). *Suppa v. Lehigh Valley R.R. Co.*, 13 BRBS 374 (1981). The employer is liable for all medical expenses which are the natural and unavoidable

result of the work injury, and not due to an intervening cause. *Atlantic Marine v. Bruce*, 661 F.2d 898, 14 BRBS 63 (5<sup>th</sup> Cir. 1981), *aff'd* 12 BRBS 65 (1980).

Following Claimant's first injury in 1992, he was examined by Drs. Walker, Jr. and Cenac. Claimant was diagnosed with degenerative disc disease. Following Claimant's second injury in 1993, he was examined by Drs. Butler, Whitecloud, Braumfield, Doyle, Ginzburg, Cenac, Murphy, Bartholomew, Alexander, Baum, Steck and Hannie.

Dr. James Butler, an orthopedic surgeon, examined Claimant from June 9, 1993 through May 4, 1994. He performed physical examinations of Claimant and ordered a variety of tests to be performed. Claimant complained of low back pain. Dr. Butler opined that Claimant suffered from symptomatic spinal stenosis at the L1-2 level and chronic neck pain from a cervical sprain. On May 4, 1994, Claimant returned to Dr. Butler with a temporary increase in his subjective symptoms. Surgery was discussed, but Dr. Butler believed conservative measures would be more appropriate.

Dr. Edna Doyle, a physical therapist and pain specialist, examined Claimant from February 12, 1995 through August 21, 1995. Claimant complained of neck pain, pain in the right sacroiliac area, around to the groin and down the lateral thigh to the knee, and soreness under his right heel. After Dr. Doyle examined Claimant and conducted tests, she concluded that her findings did not correlate with Claimant's complaints. In fact, Claimant's symptoms had not improved with the physical therapy. Dr. Doyle, therefore, recommended that the therapy be terminated and Claimant undergo a psychological evaluation.

Dr. Harold Ginzburg, a board certified psychiatrist, is currently Claimant's treating physician and has been since May 1996. During this period, Dr. Ginzburg performed numerous physical examinations and ordered a multitude of tests. He also controlled Claimant's medication. During this period, Claimant complained of depression, low back pain, problems of sexual intimacy with his wife, concentration problems, and memory lapses. By March 1998 Claimant was very depressed and had suicidal thoughts. He and his wife had marital problems and were eventually divorced in March 1999.

Dr. Ginzburg's last examination of Claimant was November 8, 2000. Dr. Ginzburg diagnosed Claimant with depression, chronic pain (partially controlled by the narcotic and antidepressant), urological complications secondary to the work-related injury and incontinence. He believed psychiatric intervention continued to be necessary. Dr. Ginzburg stated that Claimant's urological problems exacerbated his depression. He remained of the opinion that Claimant's depression was causally related to his pain. "As long as the pain is substantive and has a physiological etiology, it will be difficult to remove the depression."

Drs. Whitecloud and Braumfield, orthopedic surgeons, examined Claimant once on December 20, 1996. Claimant related the history of his May 1993 injury and complained of chronic back, neck and lower extremity pain. After performing a physical examination of Claimant and reviewing prior medical records, they opined that Claimant suffered from "chronic neck and back pain likely psychophysiological musculoskeletal reaction." It was their opinion that Claimant, at that time, was not a surgical candidate.

Dr. Cenac, an orthopedic surgeon, examined Claimant on three separate occasions: July 29, 1997, June 29, 1999, and January 27, 2000. He refused to be one of Claimant's treating physicians and performed three isolated consultations. During these examinations, Dr. Cenac examined Claimant, had various tests performed on Claimant and reviewed Claimant's past medical records. He believed that Claimant's subjective complaints were unrelated to the 1993 injury and unsubstantiated by objective physical findings. He further believed that Claimant was not a surgical candidate.

Dr. George Murphy, a board certified orthopedic surgeon, examined Claimant at the request of the Department of Labor. Dr. Murphy, while examining and treating patients with lumbar spine injuries, no longer performs surgery. Dr. Murphy examined Claimant from July 26, 1999 through April 18, 2000. During this period, he conducted many physical examinations and had many tests performed on Claimant. The results of the EMG test and nerve conduction study were normal. However, the cervical MRI showed early degenerative changes and the lumbar MRI showed "advanced degenerative change at L1-2 with probable central disc herniation with an anterior defect against the subarachnoid space." On September 28, 1999, Claimant reported problems with his bladder functions. Dr.

Murphy strongly urged Claimant to be examined by an urologist to determine if Claimant had developed a neurogenic bladder.

Dr. Murphy's last examination was on April 18, 2000. At this time, he reviewed the reports of two urologists, Drs. Alexander and Baum. They concluded that Claimant did have a neurogenic bladder related to his back problems. Dr. Murphy diagnosed Claimant with "trouble at the L1-2 level with spinal cord damage resulting in the neurogenic bladder." Given Claimant's work accident history and the fact that Claimant has had no other injuries to his lumbar spine, Dr. Murphy believed these accidents were the cause of Claimant's symptoms.

Because Dr. Murphy believed Claimant needed ongoing active follow-up, he recommended Claimant be evaluated by either a qualified neurosurgeon or orthopedic surgeon who was familiar with the necessary surgery. If such a qualified surgeon believed that surgery was necessary, Dr. Murphy believed surgery would therefore be appropriate. Dr. Murphy stated that if Claimant did not have surgery, his bladder problems would definitely worsen and he could have additional problems with his bowel movements, as well as with his lower extremities.

Dr. Robert Alexander, a urologist, examined Claimant on December 15 and 17, 1999. Claimant complained of difficulty urinating. After Dr. Alexander examined Claimant and performed various tests, he concluded that Claimant had a hypotonic neurogenic bladder. It was his opinion that a "surgical correction of Claimant's lumbar problem should be undertaken if appropriate from an orthopedic standpoint."

Dr. Neil Baum, an urologist, examined Claimant on January 28, 2000. Claimant complained of urinary frequency, nighttime voiding, but denied urinary incontinence. After performing a physical examination and reviewing the report of Dr. Alexander, Dr. Baum opined that Claimant had urinary symptoms related to his injury of 1993. He recommended that additional tests be performed.

Dr. Bradley Bartholomew, a neurosurgeon, examined Claimant on June 18, 2000. Claimant complained of increased frequency, difficulty beginning urination and incontinence for 1.5 years. After Dr. Bartholomew performed a physical examination and reviewed MRIs, 2 myelograms, a post-myelogram CT and the

reports of Drs. Baum, Alexander and Cenac, he concluded that Claimant should undergo a decompressive procedure, which he could perform.

Dr. Steck, a board certified neurosurgeon, examined Claimant on January 3, 2001. Claimant complained of low back soreness with radiation to the right testicle, right hip pain that extended down the right leg, and difficulty with his bladder, specifically urinary frequency and frequent nighttime urination. After performing a physical examination and reviewing various diagnostic tests, Dr. Steck diagnosed Claimant with “an arthritic condition in his lumbar spine at L1-2, a degenerative disc and symptoms of urinary disturbance. I am not sure he does have what I would call a neurogenic bladder.” It was his opinion, based on his own diagnosis, that Claimant was not a surgical candidate for the reversal of a neurogenic bladder.

Dr. Steck stated that if surgery was performed, it would be a decompressive procedure. He opined there was not a great likelihood that this type of surgery would fix a neurogenic bladder. “A bladder disturbance related to a spinal problem is one of the most difficult things to improve with surgery.” In Dr. Steck’s opinion, a decompressive laminectomy would put Claimant at risk for further degenerative change at that spinal segment, possibly resulting in spinal instability.

Dr. Thomas Hannie, Jr., a clinical psychologist, examined Claimant on February 8, 2000. After Dr. Hannie reviewed Claimant’s prior medical records and administered a variety of tests, he stated that no indication of pre-existing psychopathology existed. He determined that Claimant suffered from significant depression with suicidal ideation/potential. It was Dr. Hannie’s opinion that surgery would not be successful in relieving his pain complaints because of the depression and lack of support from his wife. Therefore, he recommended that Claimant be stabilized psychologically and socially prior to surgery.

The issue in question is whether or not Claimant should undergo surgery to help alleviate the problems associated with his neurogenic bladder. Claimant testified that he would like to undergo back surgery. The first documentation that Claimant was having bladder problems was on September 28, 1999, as evidenced by Dr. Murphy’s reports. Therefore, the opinions of Drs. Walker, Butler, Doyle, Whitecloud, and Braumfield, are irrelevant with regards to whether or not Claimant should have surgery, because they examined Claimant prior to the onset of his bladder problems.

Claimant was examined by Drs. Alexander and Baum, both qualified urologists, to determine if the onset of his 1999 bladder problems was caused by a neurogenic bladder. Only Dr. Alexander rendered a diagnosis. He believed that Claimant's bladder problems were as result of a neurogenic bladder. He recommended surgery if it was appropriate from an orthopedic standpoint. Dr. Baum, after examining Claimant, simply concluded that Claimant's bladder problems were caused by his 1993 injury. He did not offer a diagnosis.

Claimant was also examined by Drs. Bartholomew and Steck, two qualified neurosurgeons, and Dr. Murphy, an orthopedic surgeon. Dr. Bartholomew, after examining Claimant and reviewing the report of Drs. Alexander and Baum, concluded that, as it was determined by a qualified urologist that Claimant had a neurogenic bladder, a decompressive procedure was both reasonable and necessary. Dr. Bartholomew stated that he could perform this procedure. Dr. Murphy also examined Claimant and stated that if Claimant did have a neurogenic bladder, he believed surgery was appropriate, if a qualified neurosurgeon, such as Dr. Bartholomew, believed it to be so.

Dr. Steck examined Claimant and reviewed various diagnostic tests. He alone concluded that Claimant did not suffer from a neurogenic bladder and as such, surgery was neither reasonable nor necessary. While Dr. Steck is a qualified neurosurgeon, he is not a urologist. His diagnosis, therefore, was not premised on the conclusions of a doctor qualified to determine whether Claimant had a neurogenic bladder.

Dr. Cenac, in a letter dated January 12, 2001, stated that he concurred with Dr. Steck's report and recommendations. He believed that Claimant was not a surgical candidate. While Dr. Cenac reviewed the reports of Drs. Alexander, Murphy and Steck, he never reviewed Dr. Bartholomew's report. Dr. Cenac based his opinion solely on Dr. Steck's conclusion that Claimant did not need surgery.

Dr. Ginzburg, a psychiatrist, never spoke to Claimant's need for surgery. However, as of November 2000, Dr. Ginzburg believed that continuous psychiatric treatment was necessary. Dr. Hannie, a psychologist, recommended that if surgery was to be performed, Claimant should be stabilized psychologically and socially prior to such surgery.

I accept the opinions of Drs. Alexander, Bartholomew, and Murphy, over those of Drs. Steck and Cenac with regards to whether Claimant should undergo back surgery. The evidence demonstrates Claimant's neurogenic bladder is a result of his 1993 work-related injury, while employed by Employer. While surgery may not reverse Claimant's neurogenic bladder, the evidence presented shows that the effects of such surgery could halt the continuation of the problem. As warned by Dr. Murphy, further delay in treatment could worsen Claimant's bladder problems and could lead to additional problems with Claimant's bowel movements, as well as with his lower extremities.

Consequently, I find that the decompressive procedure offered to be performed by Dr. Bartholomew is a necessary and reasonable medical expense, as is Claimant's continued psychiatric treatment by Dr. Ginzburg. Employer is liable for these treatments and for all other related future medical expenses.

## **ORDER**

It is hereby **ORDERED** that:

1. Employer/Carrier shall pay to Claimant temporary total disability compensation from July 7, 1999, and continuing based on an average weekly wage of \$429.34;<sup>35</sup>
2. Pursuant to Section 7 of the Act, Employer/Carrier are responsible for the expense of Claimant's future surgery, to be performed by Dr. Bradley Bartholomew, as well as all other reasonable and necessary medical expenses Claimant might so incur;
3. Employer shall receive a credit for all compensation benefits and medical benefits previously paid;
4. Employer shall pay interest on all of the above sums determined to be in arrears as of the date of service of this ORDER at the rate provided by in 28 U.S.C. §1961 and *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984);

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<sup>35</sup>Claimant was satisfied with the compensation he had received until July 7, 1999, when his status was reduced by Employer to temporary partial disability.



5. Counsel for Claimant, within 20 days of receipt of this ORDER, shall submit a fully supported fee application, a copy of which must be sent to opposing counsel who shall then have 10 days to respond with objections thereto. *See* 20 C.F.R. § 702.132.

6. All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

Entered this 4<sup>th</sup> day of June, 2001, at Metairie, Louisiana.

A  
**C. RICHARD AVERY**  
Administrative Law Judge

CRA:haw